



DOUBLE ANCHOR RANCHES, INC. v. BLM

188 IBLA 77

Decided June 30, 2016



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Interior Board of Land Appeals
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DOUBLE ANCHOR RANCHES, INC. v. BLM

IBLA 2016-29

Decided June 30, 2016

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer,
granting a petition to stay the effect of a Notice of Final Grazing Decision.

Affirmed.

1. Grazing Permits and Licenses: Adjudication;
Grazing Permits and Licenses: Appeals;
Grazing Permits and Licenses: Rules of Practice:
Appeals

The Departmental stay regulation for grazing appeals at 43 C.F.R. § 4.471(c) allows for a petition for a stay of a final BLM grazing decision pending appeal, provided the appellant shows sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied; (2) the likelihood of the appellant's success on the merits; (3) the likelihood of immediate and irreparable harm if the stay is not granted; and (4) whether the public interest favors the granting of a stay. The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted. A party challenging a stay decision of an Administrative Law Judge bears the burden of proof to demonstrate error in the decision.

2. Grazing Permits and Licenses: Adjudication;
Grazing Permits and Licenses: Appeals;
Grazing Permits and Licenses: Rules of Practice:
Appeals: Stays

An Administrative Law Judge properly grants a petition to stay the effect of a BLM grazing decision when the appellant carries its burden to establish that it is likely to

succeed on the merits of its appeal, because it offered a reasonable basis for finding material legal or factual error in the decision, and clearly satisfies the other stay criteria of 43 C.F.R. § 4.471(c).

APPEARANCES: Jay R. Friedly, Esq., Mountain Home, Idaho, and Michael Christian, Esq., Boise, Idaho, for Double Anchor Ranches, Inc.; Robert B. Firpo, Esq., and Dusty D. Parson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The Bureau of Land Management (BLM) has appealed from an October 6, 2015, Order of Administrative Law Judge (Judge) Harvey C. Sweitzer (Order), granting a petition by the Double Anchor Ranches, Inc. (Double Anchor) to stay the effect of an August 3, 2015, Notice of Final Decision of the Field Manager, Four Rivers (Idaho) Field Office (FRFO), Boise District, BLM (Final Decision). The Final Decision approved the renewal of a 10-year grazing permit for the East Hammett #5 and East Bennett Mountain Allotments (together, the Allotments), which are located in southwestern Idaho. It substantially reduced Double Anchor's authorized livestock grazing use under its existing permit, decreasing the forage necessary to sustain one cow (or its equivalent) for one month, known as an animal unit month (AUM), from 1,639 to 987 AUMs. Double Anchor appealed the Final Decision, and the Departmental Cases Hearings Division (DCHD) docketed the appeal as ID-BD-1000-2015-010.

In his decision now on appeal, Judge Sweitzer granted Double Anchor's petition to stay the effect of the Field Manager's Final Decision, during the pendency of the appeal before the DCHD. He evaluated whether Double Anchor had carried its burden to justify a stay, by satisfying each of the four stay criteria established by the Departmental stay regulation for grazing appeals at 43 C.F.R. § 4.471(c). In particular, Judge Sweitzer found that the uncertain, short-term harm to the Federal range was outweighed by the immediate and irreparable, near certain and substantial harm to Double Anchor, and also that Double Anchor had shown a sufficient likelihood of success by raising a serious question as to the adequacy of BLM's basis for the reduced levels of permitted use imposed under the Final Decision. On appeal before the Board, BLM challenges Judge Sweitzer's weighing of harms and sufficient likelihood of success analysis, defending the adequacy of the record to support BLM's decision.

In this adjudication, the Board considers whether BLM has shown error in Judge Sweitzer's analysis of the regulatory elements for a stay of the Final Decision. We find that BLM's reassertion of the same relative harm claims in substantially similar terms as it raised before Judge Sweitzer fails to show how the Judge's weighing of the relative harm was in error, and we therefore conclude that BLM does not carry its burden on appeal with respect to this regulatory criterion. With respect to appellant's likelihood of success on the merits, we concur with Judge Sweitzer that, while there may be evidence supporting reductions in grazing, there appears to be a lack of record support undergirding the specific amount of the reductions and, therefore, that Double Anchor had offered a reasonable basis for finding material legal or factual error in the decision. Since BLM has shown no error in Judge Sweitzer's finding that Double Anchor had met these and the other regulatory elements for a stay of the Final Decision, and we find none, we affirm Judge Sweitzer's October 2015 Stay Order.

I. Background

A. Double Anchor Held a Grazing Permit to Graze Cattle on the Public Lands of the Two Allotments at Issue Prior to BLM's Final Grazing Decision

Double Anchor holds a grazing permit for the Allotments. BLM initially issued Double Anchor's existing permit on December 28, 2004, for a 10-year term. BLM renewed the permit prior to its expiration on December 28, 2014, but, on March 1, 2014, Congress automatically renewed the permit, pending BLM's processing of a permit renewal, as mandated by Congress.¹

The East Hammett #5 Allotment encompasses 10,471 acres of public land, 694 acres of private land, and 638 acres of state land. At the time of BLM's August 2015 Final Decision, most of the public lands in the East Hammett #5 Allotment were designated as Preliminary Priority Habitat (PPH) for the Greater sage-grouse (*Centrocercus urophasianus*) (sage-grouse).² In 2010, the Fish and Wildlife Service

¹ Section 411 of Title IV of Division G (Department of the Interior, Environment, and Related Agencies Appropriations Act, 2014) of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 339. See § 415, Title IV of Division E (Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012), Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786,1043; § 325, Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1307-08.

² Environmental Assessment (EA) at 122, Map 11a (Sage-grouse Habitat Southern Allotments); Final Decision at 6, at Map 2 (Riparian Health and Wildlife Habitat).

(FWS), U.S. Department of the Interior, determined that the sage-grouse was properly listed, range-wide, as a threatened and endangered species, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531-1544 (2012), but that listing as such was precluded by higher priority listing actions.³ Thereafter, FWS undertook an extensive reexamination of the status of the sage-grouse in the western United States, concluding that the listing of the species was no longer warranted.⁴

The East Bennett Mountain Allotment encompasses three pastures for a total of 6,995 acres of land, most of which is private land (5,483 acres). The remaining 1,512 acres are public land, confined to Pastures 2 (57 acres) and 3 (1,455 acres).⁵

Under the grazing permit operative prior to the Final Decision, Double Anchor was authorized to graze cattle on the public lands of the Allotments, as follows: East Hammett #5: 320 cattle from April 10 to June 30 (or 863 AUMs), and 314 cattle from October 1 to November 30 (or 630 AUMs); East Bennett Mountain: 49 cattle from July 1 to September 30 (or 146 AUMs). The total number of AUMs for the East Hammett #5 Allotment was 1,493, and total number of AUM's for the East Bennett Mountain Allotment was 146, totaling 1,639 AUMs for both Allotments. Cattle numbers in the East Bennett Mountain Allotment were allowed to vary during the authorized season of use, so long as the total number of AUMs (146) was not exceeded. Actual grazing use by Double Anchor varied each year, during the period from 1997 to 2013, from 725 to 1,315 AUMs (East Hammett #5) and from 41 to 148 AUMs (East Bennett Mountain). In the case of the East Hammett #5 Allotment, "[t]he majority of use occurred during the spring (an average of 864 AUMs or 84% of total annual use)."⁶ Starting in 2006, Double Anchor voluntarily employed a deferred rotational grazing system for the two Allotments.

As part of a broad effort to renew grazing permits for 12 allotments in the Bennett Mountain Management Area, BLM conducted rangeland health assessments⁷ of the Allotments in 2004, and measured utilization of perennial bunchgrasses at the end of the spring/early summer grazing period in the East Hammett #5 Allotment in

³ See 75 Fed. Reg. 13,910 (Mar. 23, 2010).

⁴ See 80 Fed. Reg. 59,858 (Oct. 2, 2015).

⁵ See Rangeland Health Assessment (RHA) (East Bennett Mountain) at 1.

⁶ Final Decision at 9.

⁷ The Rangeland Health Standards (RHS) were established in the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management adopted by the Secretary of the Interior, effective Aug. 12, 1997. See <http://www.blm.gov/style/medialib/blm/id/publications.Par.91993.File.dat/SGFinal.pdf> (last visited June 17, 2016).

2006, finding utilizations ranging from 35% to 81% on key forage species.⁸ BLM consulted with the appellant permittee and members of the public starting in 2010, and proposed renewing grazing permits for the allotments, subject to revised terms and conditions.⁹ BLM began drafting the EA, and included, in its analysis, trend data gathered in 2010 and 2011.¹⁰

In its EA, BLM considered four alternatives, including three action alternatives, Alternative B (Continue Current Use), Alternative C (Permittee Application), and Alternative D (BLM Proposal). BLM finalized the EA and rangeland health determinations in 2014. BLM found that the East Hammett #5 Allotment was not meeting rangeland health standards (Standards) 1 (watersheds), 2 (riparian areas and wetlands), 3 (stream channel/floodplain), 4 (native plant communities), and 8 (listed and special status species), and that current livestock grazing management was a factor contributing to the Allotment not meeting these standards.¹¹ BLM found that, for unknown reasons, the East Bennett Mountain Allotment was not meeting the watersheds and native plant communities standards.¹²

On May 27, 2014, the Field Manager issued a Finding of No Significant Impact, based on the EA, concluding that BLM was not required by section 102(2)(C) of NEPA to prepare an Environmental Impact Statement. That same date, the Field Manager issued a Notice of Proposed Decision, proposing to renew Double Anchor's 10-year grazing permit for the Allotments, subject to revised terms and conditions. Double Anchor timely filed a protest, challenging the Proposed Decision, on June 13, 2014.

B. BLM'S Final Decision Reduced Grazing on the Allotments

In the August 2015 Final Decision, the Field Manager rejected Double Anchor's protest, and approved renewal of a 10-year grazing permit for the East Hammett #5 and East Bennett Mountain Allotments, subject to revised terms and conditions. BLM's Protest Responses address protests filed by Double Anchor and the Western Watersheds Project.

⁸ Order at 2.

⁹ See BLM Notes of Meeting with Double Anchor, dated April 2010 (Ex. 13 to Statement of Reasons (SOR)); Response to Double Anchor's Petition (Response to Petition) at 23.

¹⁰ Order at 2.

¹¹ *Id.*

¹² *Id.*

As part of the Final Decision, BLM included the public lands in Pasture 3 of the East Bennett Mountain Allotment with the East Hammett #5 Allotment, creating the Hammett #5 Allotment. Pasture 3 is now referred to as the North Pasture of the Hammett #5 Allotment, the southern portion of which is divided into the East and West Pastures. BLM designated Pasture 2 as the East Bennett Mountain Allotment.¹³ The total number of acres of public land in the two Allotments--11,983 acres--remained the same (11,926 acres in the Hammett #5 Allotment, and 57 acres in the East Bennett Mountain Allotment).

In the Final Decision, BLM also reduced the AUMs of permitted use by 652, allowing 977 AUMs (345 cattle), from April 15 to November 30, on the Hammett #5 Allotment and 10 AUM (600 cattle), from March 1 to February 28, on the East Bennett Mountain Allotment. The Final Decision further provided for implementation of a two-year rotational grazing system for the Hammett #5 Allotment, allowing each of the pastures to be rested in the spring/early summer every other year.¹⁴

On September 3, 2015, Double Anchor filed a timely appeal from the Final Decision, requesting a stay of the effect of the decision during the pendency of the appeal before the DCHD, pursuant to the regulations at 43 C.F.R. §§ 4.471(a) and 4160.4.

II. Judge Sweitzer's Decision Granted Double Anchor's Request for a Stay

A. Double Anchor Bore the Burden of Proof to Demonstrate that It Had Met the Regulatory Criteria under 43 C.F.R. § 4.471(c) for a Stay of the Final Grazing Decision and BLM Bears the Burden of Proof to Show Judge Sweitzer Erred in Granting the Stay

[1] Based on his review of the record and pleadings, Judge Sweitzer granted Double Anchor's petition to stay the effect of the Field Manager's Final Decision, during the pendency of the appeal before the DCHD. He evaluated whether Double Anchor had carried its burden to justify a stay, by satisfying each of the four stay criteria established by the Departmental stay regulation for grazing appeals at 43 C.F.R. § 4.471(c). Those regulations allow for a "petition for a stay of a final BLM grazing decision pending appeal," provided the appellant shows "sufficient justification based on the following standards": (1) the relative harm to the parties if the stay is granted or denied; (2) the likelihood of the appellant's success on the merits; (3) the likelihood of immediate and irreparable harm if the stay is not granted;

¹³ *Id.* at 3.

¹⁴ See Final Decision at 12 (Table 2 (Mandatory terms and conditions)).

and (4) whether the public interest favors the granting of a stay.¹⁵ The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted.¹⁶ A party challenging a stay decision of an Administrative Law Judge bears the burden of proof to demonstrate error in the decision.

B. Judge Sweitzer's Decision Found that a Stay of the Final Decision was Justified

Judge Sweitzer's Order concluding Double Anchor had carried its burden to justify a stay and granting the request meant Double Anchor was authorized to graze the Allotments under the terms and conditions of its existing grazing permit.¹⁷

Specifically, Judge Sweitzer held that the relative harms weighed in favor of a stay. Looking at the evidence, Judge Sweitzer noted the datedness of BLM's data, questions regarding the representativeness of the sites, which BLM had evaluated, and the fact that the Final Decision imposed a 2-year rotational grazing system for the 2 pastures of the Hammett #5 Allotment, but did not seem to take into account that, starting in 2006, Double Anchor implemented such a system in *both* Allotments, since BLM's rangeland health assessments pre-dated those rotational years and any resulting rangeland improvements.¹⁸

Judge Sweitzer also was aware of the PPH and special species status of the sage-grouse, and acknowledged that "harm to sage grouse would be a serious harm, given its special species status and BLM policies."¹⁹ However, Judge Sweitzer found that the harm to the Federal range asserted by BLM was short-term, uncertain, and poorly supported in the record. Judge Sweitzer compared this to the affidavit submitted by Double Anchor, which asserted that, given the substantial reduction in authorized grazing use, Double Anchor would likely be forced to either (1) graze the 216 cows forced off the public lands for 3 months on private leased pasture, at an annual cost of \$26,246 (for pasture rental, trucking, and maintenance costs); (2) graze these cows on its own private lands for 3 months, at an annual cost of \$54,625; or (3) sell these cows, realizing a profit of \$324,000, but losing the annual revenue of \$347,490 that would be gained by the future calves of these cows.²⁰

¹⁵ See *Petan Company of Nevada v. BLM*, 186 IBLA 81, 91 (2015).

¹⁶ 43 C.F.R. § 4.471(d).

¹⁷ See Order at 5, n.1; 43 C.F.R. § 4160.3(d).

¹⁸ Order at 4-5.

¹⁹ *Id.* at 5.

²⁰ See Riggs Affidavit (Aff.) (attached to NA/SOR and Petition), ¶ 7, at 4-5.

Judge Sweitzer concluded that the uncertain, short-term harm to the Federal range was outweighed by the immediate and irreparable, “near certain and substantial harm” to Double Anchor, due to the substantial reduction in authorized grazing use, which would result in financial loss “ranging from \$26,246 to \$347,490 annually[.]”²¹ Judge Sweitzer explained that BLM had provided only limited, outdated data, which was inadequate to offset Double Anchor’s showing of immediate and irreparable harm.

For this same reason, Judge Sweitzer also found the record BLM submitted was likely insufficient to support a substantial reduction in grazing, as required by 43 C.F.R. § 4.480(b).²² He emphasized the absence in the record of reasoned explanations connecting specific data with specific reductions of permitted use. He thus concluded that Double Anchor had “shown a sufficient likelihood of success on the merits as to the rationality of the basis for these reduced levels,”²³ sufficient to justify his granting a stay.

Finally, Judge Sweitzer held that the public interest favored a stay, because, Double Anchor was the party “likely to suffer the most harm” by denying or granting a stay.²⁴ Judge Sweitzer stated that, while the public has an interest in avoiding harm to range resources, that interest was poorly supported and uncertain, and, therefore, outweighed by the interest in furthering the economic stability of the livestock industry, represented by Double Anchor.²⁵

BLM timely appealed Judge Sweitzer’s October 2015 Order to the Board, pursuant to 43 C.F.R. § 4.478(a).

III. Analysis: Judge Sweitzer Properly Found Double Anchor had Satisfied the Criteria for a Stay of a Grazing Decision

A. BLM Has Not Met Its Burden to Show Error in the Judge’s Weighing of the Relative Harms to the Parties

²¹ Order at 5 (citing Riggs Aff., ¶ 7, at 4-5).

²² *Id.* at 4-5.

²³ *Id.*

²⁴ *Id.* at 6 (citing *Hodges v. Abraham*, 253 F. Supp.2d 846, 874 (D.S.C. 2002), *aff’d*, 300 F.3d 432 (4th Cir. 2002), *cert. denied*, 537 U.S. 1105 (2003)).

²⁵ *See id.*

Our review of the record convinces us Judge Sweitzer properly evaluated whether Double Anchor carried its burden to justify a stay, by satisfying each of the four stay criteria established by 43 C.F.R. § 4.471(c).

BLM challenges two aspects of the decision on appeal. The agency takes issue with the judge's weighing of relative harms to the parties.²⁶ BLM also contends that Judge Sweitzer erred in his application of the likelihood of success criterion, arguing that its determination to substantially reduce authorized grazing use and limit the amount of spring grazing was guided by ample data and expert opinions.²⁷ BLM asks the Board to reverse Judge Sweitzer's Order and allow its August 2015 Final Decision "to take full effect immediately."²⁸

BLM raises the same relative harm claims in substantially similar terms before the Board as it did before Judge Sweitzer.²⁹ BLM asserts Judge Sweitzer "places much too high a premium on Appellant's [irreparable harm], at the expense of resources on the allotment."³⁰ BLM's assertion is inadequate to show how his weighing of the relative harm was in error and, therefore, BLM does not carry its burden on appeal with respect to this regulatory criterion.

B. BLM Has Not Met Its Burden to Show Error in the Judge's Finding of a Sufficient Likelihood of Success on the Merits Because Double Anchor Raised a Reasonable Basis for Error in the Grazing Decision

Judge Sweitzer ruled that Double Anchor had shown a sufficient likelihood of success by raising "a serious question as to the adequacy of the BLM's basis for the reduced levels of permitted use imposed under the final decision."³¹ Judge Sweitzer explained that, to achieve success on the merits, the appellant bears the burden to establish that the decision fails to substantially comply with the Department's grazing regulations or that, by a preponderance of the evidence, the decision is unreasonable and thus lacks a rational basis."³² For purposes of the stay analysis, Judge Sweitzer did not determine that appellant's likelihood of success was free from doubt, but

²⁶ See SOR at 7-13.

²⁷ See *id.* at 13-23.

²⁸ *Id.* at 4, 24.

²⁹ Compare SOR at 7-13 with Stay Response at 5-10.

³⁰ SOR at 8.

³¹ Order at 4.

³² *Id.* (quoting *Hanley Ranch Partnership v. BLM*, 183 IBLA 184, 198 (2013), citing 43 C.F.R. § 4.480(b); *Foianini v. BLM*, 171 IBLA 244, 250-51 (2007); *Mercer v. BLM*, 159 IBLA 17, 29 (2003); *Yardley v. BLM*, 123 IBLA 80, 90 (1992)).

found it was “enough that the [appellant] has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberative investigation.”³³ The Judge concluded that, “[w]hile there may be evidence supporting reductions, there is a lack of support for the amount of the reductions,” pointing out that “BLM has utilization data for the former East Hammett #5 Allotment for only one year, 2006, and no utilization data for the former East Bennett Mountain Allotment,” and further, that “most of its field data is over 10 years old.”³⁴

BLM characterizes Judge Sweitzer’s “conclusion that BLM lacked sufficient data on which it could support the decision,” as requiring BLM “to provide every scrap of information gathered on an allotment over a decade.”³⁵ We disagree with that reading of the Judge’s Order, and find his analysis and conclusion reasonable and well supported in law and the record.

BLM then argues it ultimately will prevail on the merits, supporting its claim by relying on many of the same record exhibits it relied on before Judge Sweitzer, as supplemented on appeal by affidavits, an updated sage-grouse map, trend data, actual use reports, a technical reference, and 6 other documents.³⁶ BLM’s supplemental submission may be probative at a hearing on the merits, but it does not demonstrate

³³ *Id.* (quoting *Wyoming Outdoor Council*, 153 IBLA 379, 388 (2000) (quoting *Sierra Club*, 108 IBLA 381, 384-85 (1989)) (quoting *Placid Oil Co. v. U.S. Department of the Interior*, 491 F. Supp. 895 (N.D. Texas 1980) (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953))); *see also Pueblo of San Felipe*, 187 IBLA 342, 346 (2016) (so long as the other stay criteria are established, it will be sufficient for a stay that the appellant “has raised issues involving material legal and factual concerns about BLM’s decision”); *cf. Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1297-98 (9th Cir. 2003) (“Under the ‘traditional’ criteria, a plaintiff must show ‘(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest’ *Johnson v. Cal. State Bd. Of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995). Alternatively, a court may grant the [preliminary] injunction if the plaintiff ‘demonstrates *either* a combination of probable success on the merits and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in his favor.’ *Id.*”).

³⁴ Order at 4.

³⁵ SOR at 14.

³⁶ Compare SOR at 14-18, 20-22 with Stay Response at 10-15, 17-22.

Judge Sweitzer erred in determining that Double Anchor had satisfied the regulatory elements necessary to justify a stay.

Double Anchor objects to reversal of Judge Sweitzer's Order, asserting it satisfied the likelihood of success and other stay criteria. Like BLM, appellant provides additional evidence, which may be explored fully at hearing before the DCHD.

[2] An Administrative Law Judge properly grants a petition to stay the effect of a BLM grazing decision when the appellant carries its burden to establish that it is likely to succeed on the merits of its appeal, because it offered a reasonable basis for finding material legal or factual error in the decision, and clearly satisfies the other stay criteria of 43 C.F.R. § 4.471(c).

With respect to Double Anchor's likelihood of success on the merits, we concur with Judge Sweitzer that, while there may be evidence supporting reductions in grazing, there appears to be a lack of record support undergirding the specific amount of the reductions, as Double Anchor asserts. We conclude, therefore, as did Judge Sweitzer, that Double Anchor offered a reasonable basis for finding material legal or factual error in the decision, by raising a serious question as to the adequacy of BLM's basis for the reduced levels of permitted use imposed under the Final Decision—a question going to the merits so serious, substantial, difficult and doubtful, as to make it fair grounds for more deliberative investigation, which will occur at the next phase of the appeal before the DCHD.³⁷

IV. Conclusion

To carry its burden on appeal, the agency, like any appellant, must preponderate in showing material error in the decision on appeal. We find BLM's characterization of Judge Sweitzer's analysis unpersuasive in demonstrating error. Judge Sweitzer acknowledged the data relied upon by the agency, balanced it against the evidence of harm to the permittee, and found it wanting. Double Anchor carried its burden to establish that it is likely to succeed on the merits of its appeal, because it offered a reasonable basis for finding material legal or factual error in the decision, and clearly satisfied the other stay criteria of 43 C.F.R. § 4.471(c). On appeal of Judge Sweitzer's stay Order, BLM has not shown error in any of the Judge's stay analysis, and we find none.

³⁷ See Order at 4 (quoting *Hanley Ranch Partnership v. BLM*, 183 IBLA at 198; and *Wyoming Outdoor Council*, 153 IBLA at 388).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, under 43 C.F.R. § 4.1, we affirm Judge Sweitzer's October 2015 Order, granting Double Anchor's petition for a stay of the effect of the Field Manager's August 2015 Final Decision, pending a hearing before the DCHD and final resolution on the merits of Double Anchor's challenge.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge